IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SECOND DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION No. 17935 of 1998

Between:

A.S.Rao

..... PETITIONER

AND

Union of India, Ministry of Defence Service,
New Delhi and another

.....RESPONDENTS

ORDER:

This writ petition is filed seeking a Mandamus to declare the proceedings dated 04.03.1998 in A.O.No.309 of 1973 on the file of the 2nd respondent passing the order of dismissal of the petitioner from service, as arbitrary and illegal, with a consequential direction to respondents to reinstate the petitioner into service with all consequential benefits.

There is no necessity of going to all the details. After conducting a summary court martial, the Commanding Officer, Depot Battalion, Madras Engineer GP & Centre, through his order dated 04.03.1998, directed dismissal of the petitioner from service. The impugned order reads as under:

> "(a) No.15300091A Sapper AS Rao attending HTT Mason C1-II was found intoxicated on 31 Oct 97 while on duty in HQ Offrs Mess. He had gone to a liquor shop in the nearby Village which was placed 'Cut of Bound' for all Ranks, purchased a bottle of Whisky, consumed some during his duty hrs and the remaining was found kept under his bed. There was a case of loss of rifle in the Centre in the recent past due to negligence in performing the duties due to intoxication. In another case, a Hav of one of the Trg Bas in the Centre was found intoxicated while performing duty and was awarded punishment 'reduced to ranks'. In spite of repeated warning during Sainik Sammalans the individual was again found drunken while on duty.
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> (b) From the past record of the individual it is seen that he was tried summarily by Commanding Officer 202 Engineer Regiment on 01 Oct 93 for an offence under Army Act Sec 63-An Act prejudicial to Good Order and Military discipline in that he had consumed liquor and having an affair with a maid of an officer and awarded 07 days RI in Military Custody.
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> (c) The retention of the individual in the Army will set a bad example to the other fellow Soldiers. Considering the security aspect of the Centre, past record of the individual and security of the offence committed by the individual the punishment 'To be dismissed from the Service' awarded."

There is no dispute as to issuing charge sheet and conducting court martial and finding of the petitioner guilty of the charges. The only ground urged by the learned counsel for the petitioner is that the past conduct of the petitioner ought not to have

taken into consideration for the purpose of imposing punishment of dismissal of the petitioner from service while considering the present misconduct. Though the learned counsel for the petitioner raised such a ground, but there is no dispute as to the past conduct of the petitioner. In fact, the petitioner involved in almost all similar misconduct of intoxicating and creating a scene at the work place. Earlier he was involved in a case of loss of a rifle due to his negligence and performing duties in intoxicated condition. In another case, he was found intoxicated while performing duty and was awarded punishment of reduction to ranks. Apart from this, inspite of repeated warnings during Sainik Sammalans, the petitioner did not mend his ways and repeated the same misconduct.

The contention of the learned counsel for the petitioner is that the petitioner was not dismissed from service for the intoxicated condition, but since he misbehaved with a maid-servant in the officers quarters, therefore, that was taken seriously and he was dismissed from service. That the authorities have no power to conduct enquiry. That they have no power to take the past conduct into consideration. I am afraid, I cannot agree with the submissions made by the learned counsel for the petitioner. The petitioner has not made out any grounds warranting interference of this Court into the impugned order of dismissal passed by the 2nd respondent. The writ petition is devoid of merit and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

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C.V.RAMULU,J

Dated: 22.08.2005

Dsr